

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JOHN GRAPHENTEEEN,

Plaintiff,

v.

ORDER

Civil File No. 15-2503 (MJD/FLN)

MILES R. BALACH, et al.,

Defendants.

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Counsel for Plaintiff.

Eric V. Brown, Minnesota Attorney General's Office, Counsel for Defendants.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel filed on August 22, 2016. Defendants Miles R. Balach and Maryjo K. Fales filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court adopts the Report and Recommendation of United States Magistrate Judge Noel filed on August 22, 2016.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED:

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Franklin L. Noel filed on August 22, 2016 [Docket No. 49].
2. Miles R. Balach's and Maryjo K. Fales's Motion to Dismiss First Amended Complaint [Docket No. 36] is **GRANTED IN PART** and **DENIED IN PART** as follows:
 - a. To the extent Defendants Balach and Fales seek to dismiss Count II of Plaintiff's Amended Complaint, the motion is **GRANTED** and the claim are **DISMISSED**.
 - b. To the extent Defendants Balach and Fales seek to dismiss Count I of Plaintiff's Amended Complaint pursuant to violations of his rights under the Eighth Amendment, the motion is **GRANTED**.
 - c. To the extent Defendants Balach and Fales seek to dismiss Count I of Plaintiff's Amended Complaint pursuant to violations of his rights under the Fourteenth Amendment, the motion is **DENIED**.

Dated: October 13, 2016

s/ Michael J. Davis

Michael J. Davis

United States District Court